

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

W.R. GRACE & CO., *et al.*,

Debtors.

)
) Chapter 11
)

) Case No. 01-01139 (JKF)
) Jointly Administered
)

) Related to Docket No. 22962, 23264
) Hrg. Date: September 29, 2009
) Objection Deadline: September 16, 2009
)

LIMITED JOINDER OF THE EDWARDS CLAIMANTS IN W.R. GRACE & CO. ET AL.'S
BRIEF IN OPPOSITION FIREMAN'S FUND INSURANCE COMPANY'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Aaron C. Edwards, James T. Beam, Edward E. Storey, John M. Thomas, and Sheila Martin¹ (collectively, the "Edwards Claimants") hereby file a Limited Joinder to the Brief of W.R. Grace & Co. et al ("Grace") in Opposition to Fireman Fund Insurance Company ("FFIC")'s Motion for Relief From The Automatic Stay (the "Motion") (the "Debtors' Response").

The Edwards Claimants oppose the portion of the Motion whereby FFIC seeks to assert the rights of the Edwards Claimants to lift the automatic stay and proceed with the state court appeal of the Edwards Judgment (the "Appeal"), and hereby join in that part of the Debtors' Response.²

¹ Individually and as Administratrix of the Estate of Jessie J. Williamson, Deceased, and as Representative of the Wrongful Death Beneficiaries.

² The Edwards Claimants do not join in the portion of the Response that discusses the merits of the Edwards Judgment or the Appeal (which the Edwards Claimants contend is unlikely to prevail), and remain of the position that the judgment will be upheld if reviewed on appeal.

The Edwards Claimants have not consented to FFIC asserting their rights. FFIC is not a party to the action in the Texas court and lacks standing to assert the rights of the Edwards Claimants to lift the stay and prosecute that action. Only a party in interest, i.e. “one who, under the applicable substantive law, has the legal right which is sought to be enforced or is the party entitled to bring suit” may seek relief from the automatic stay. *See, e.g., Roslyn Savings Bank v. Comcoach Corporation*, 698 F.2d 571, 573 (2nd Cir. 1983); *In re Jacobson*, 402 B.R. 359, 366 (Bankr. W.D. Washington 2009) (“the real party in interest in relief from stay is whoever is entitled to enforce the obligation sought to be enforced”); *Greg Restaurant Equipment and Supplies, Inc. v. Tour Train Partnership*, 15 B.R. 401, 402 (Bankr. D. Vermont 1981) (a non-party “stranger to an action” *is not a party in interest* who may request the lifting of the automatic stay in bankruptcy).

As opposing parties in the litigation, the Edwards Claimants and Grace cannot be expected to agree on the merits of the Appeal. We do, however, agree on one matter, that we should not be required—at the request of a non-party to the litigation—to proceed with an appeal that has been stayed for over eight years, right in the middle of confirmation of a plan of reorganization that will lead to the emergence of Grace from bankruptcy.

While FFIC may have a contingent interest in the outcome of the Appeal, it is not a party to the litigation and cannot dictate the actions of the Edwards Claimants in the conduct of the Appeal. The Appeal has been stayed since the filing of this bankruptcy case and the parties (Grace and the Edwards Claimants) have

not requested that it proceed, which would have the effect of depriving the PI Trust from its right to review and analyze claims and deal with them in the manner the PI Trust believes most appropriate. It is not for FFIC to seek relief that properly lies within the province of the Edwards Claimants and/or the Debtor, or upon confirmation, the PI Trust.

WHEREFORE, for the foregoing reasons, the Edwards Claimants respectfully urge this Court to deny the Motion to the extent that it seeks to lift the automatic stay to allow the Appeal to be reinstated and litigated to completion, and granting such other relief to which the Edwards Claimants are justly entitled.

Dated: September 16, 2009



/s/ Kathleen M. Miller
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